

State Board of Equalization

OPERATIONS MEMO For Public Release

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SUBJECT: 10% Penalty for Failure to File a Timely Return

I. General:

Effective January 1, 1997, Sales and Use Tax Law, Section 6591 provides for the assessment of a 10% penalty for failure to pay tax timely and the assessment of a 10% penalty for failure to file a timely return. The failure to file penalty was added to the statute to encourage taxpayers making payments through Electronic Fund Transfer (EFT) to also file their return timely. The penalties imposed by this section, and the 10% penalty provided for under Section 6479.3 are limited to a maximum of 10% of the amount of taxes, exclusive of prepayments, for the reporting period.

Historically, the Cashier Unit and field office cashiers prepare "dummy" returns, or use a stamp as described in CPPM Section 841.050 when a taxpayer submits a payment with a note stating that it represents payment for a particular permit and reporting period, but submits no return.

II. Resulting Changes:

The Compliance Policy and Procedures Manual (CPPM) Section 505.090 which describes what constitutes a return has been revised. The section states that a return will be deemed to have been filed when the taxpayer provides in writing:

1. A request that the correspondence be accepted as a return or statement, regardless of how brief, indicating that the taxpayer is attempting to file a return.
2. The reporting period for which the correspondence (return) is filed.
3. The amount of tax due or that no tax is due.

When the taxpayer has shown due diligence in making every effort to submit what he or she feels is a return or indicates that he or she did not receive a return form, the correspondence submitted should be accepted as a return.

Billing:

Section 6591(c) states that penalties imposed by this section shall be limited to a maximum of 10% of the taxes due for any one return, exclusive of any prepayments. For accounts reporting by EFT, Section 6479.3 has been amended effective January 1, 1999 to include all EFT related penalties within that section and to limit the penalties imposed by that section to 10%.

Taxpayers will be advised of all of the penalties imposed under Section 6479.3 and Section 6591 and that the penalties billed will be limited to a maximum of 10%. Bill notes will appear on the taxpayer's billing notice to notify the taxpayer which penalties apply.

Requests for Relief of Multiple Penalties:

- Accounts that are subject to multiple penalties must provide a reason why they should be relieved for each penalty. The request for relief must be either granted or denied in its entirety. The taxpayer will be relieved of all penalties imposed if the request for relief is granted. If the request for relief is denied for any one of the penalties, 10% penalty applies.

III. Procedures:**Return Analysis Section:**

- No action is required on returns filed after the due date if the taxpayer has filed and paid a separate timely return for the same period.
- All returns filed and paid after the due date should be regarded as late. A maximum 10% penalty should be billed with the appropriate bill notes.
- All returns filed after the due date that have a separate, timely payment should be regarded as late. 10% penalty with the appropriate bill notes should be billed.
- The system generated list which identifies liabilities where a late return penalty has been deleted because of a separate timely payment should be reviewed, and the penalty reestablished, if appropriate.

Headquarters Cashier Unit:

- Enter effective dates on all late, no remittance returns.
- When the taxpayer fails to submit a sales and use tax return form:
 - ⇒ If the criteria set forth in CPPM Section 505.090 is met, staple the information received from the taxpayer behind a Registration System Account Inquiry (TAR AI) printout. If printouts are not available, transcribe the tax information onto a utility return form and staple the correspondence behind the utility return.
 - ⇒ If the criteria set forth in CPPM Section 505.090 is NOT met, the amount paid will be applied on the Payment Subsystem as a credit and will not clear a return delinquency for the period. Penalties will not be assessed until the return is received.

District Offices:

- Enter effective dates on all late, no remittance returns.
- When the taxpayer fails to submit a sales and use tax return form:
 - ⇒ If the criteria set forth in CPPM Section 505.090 is met, staple the information received behind a Registration System Account Inquiry (TAR AI) printout and forward to the Headquarters Cashier Unit as a return. If printouts are not available, transcribe the tax information onto a blank return form and staple the correspondence behind the return or use a stamp as described in CPPM Section 841.050.

⇒ If the criteria set forth in CPPM Section 505.090 is not met, staple the information received behind a Registration System Account Inquiry (TAR AI) printout and forward to the Headquarters Cashier Unit. Note the reporting period on the printout if available. The amount paid will be processed by the Cashier Unit onto the Payment Subsystem as a credit. The payment will not clear a return delinquency for the period. Penalties will not be assessed until the return is received.

- If a taxpayer submits a late return in person, and a timely payment or available security exists, notify the taxpayer of the failure to file a timely return penalty.
- If a 1043-D is being prepared to clear delinquent reporting periods on a closed out account and security is available, the 10% failure to file penalty should be assessed using the 1043-D on-line system. A bill note should be added regarding the penalty.

IV. Obsolescence:

This operations memo will become obsolete when procedures contained within are incorporated into the appropriate manuals.

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